



WASHINGTON STATE POTATO COMMISSION
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Washington State Department of Agriculture
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RE: WASHINGTON STATE POTATO COMMISSION'S TECHNICAL COMMENTS ON THE DEPARTMENT OF AGRICULTURE'S DRAFT "WASHINGTON STATE ENDANGERED SPECIES PLAN FOR PESTICIDE USE"

The Washington State Potato Commission (WSPC) offers these comments to the Washington State Department of Agriculture's Endangered Species Program in response to the Program's request for comments on its draft *Washington State Endangered Species Protection Plan for Pesticide Use* issued December 28, 2004.

BACKGROUND

The Washington State Potato Commission (WSPC) is a quasi-state agency dedicated to the advancement of potato farming in Washington State. The WSPC works with approximately 350 potato growers throughout Washington. Potatoes are the second largest crop grown in the state, with an annual farmgate value of approximately \$500 million. Washington State accounts for nearly one-third of all potatoes and potato products exported from the U.S., totaling nearly \$500 million in exports from the Ports of Seattle, Portland, and Tacoma in 2001 alone.

A study of the economic impacts of the Washington State potato industry show that potato farming and related processing contributes \$3.01 billion annually to the Washington economy. (David Holland & Hun Ho Yeo, *The Economic Impact of the Potato Industry in Washington State* (1997). This translates into 27,600 jobs. (Id.) This is significant considering that Washington State has one of the highest unemployment rates in the nation. (See U.S. Dep't of Labor, Bureau of Labor Statistics, September 2002, <http://www.bls.gov/web/laumstrk.htm>.)

Currently the financial health of the Washington potato industry is precarious. During the past five years, selling prices for potatoes have been very low, margins are tight, credit is scarce, and losses are mounting for many Washington potato farmers. Regulatory restrictions, such as those proposed by EPA and the Services (NOAA Fisheries and Fish and Wildlife Service) concerning the consideration of pesticides under the ESA, are of particular concern to the potato growers of Washington State. Unnecessary restrictions on pest protection products critical to Washington's farmers could have a devastating impact on the entire Washington Potato Industry and the agriculture industry in Washington State, in general.

Currently, EPA faces six lawsuits challenging the Agency's compliance with the ESA in its FIFRA pesticide regulatory program; additional lawsuits may be forthcoming. These legal challenges do not help the cause of species protection. Rather, they divert important resources and prevent the implementation of protections for listed species. Moreover, they can result in conflicting standards, *ad hoc* judicial determinations, and processes that vary from one jurisdiction to another. At worse, these lawsuits may result in indiscriminate bans or restrictions on pesticide use, may eliminate safe products because of inadequate or inaccurate data, may increase the costs of crop protection products, and may spur additional "copycat" litigation.

The WSPC believes the Department's *Endangered Species Protection Plan for Pesticide Use*, if properly implemented, could be extremely valuable to the agricultural industry in Washington State. In order to make sure that this program accomplishes this goal, the WSPC offers the following technical comments:

GENERAL TECHNICAL COMMENTS

1) The WSPC strongly supports the Washington State Department of Agriculture's (WSDA) efforts to obtain a semblance of local control of the incredibly complicated ESA/pesticide issue. One of the most troubling aspects of the entire ESA/pesticide issue is that decisions critical to the future of Washington Agriculture have been made at the regional or national level. This includes decisions by federal agencies and the federal court system. WSDA's Endangered Species Program (ESP) needs to be complemented for its efforts aimed at developing some local control of this difficult issue. For clarity, the draft should be reviewed for consistency and a list of acronyms should be provided. We also strongly urge WSDA to make provisions to make the monitoring data easily available, to stakeholders and pesticide registrants. We expect that the registrants' use of this data in their registration and especially re-registration process will simplify EPA's review of chemical data.

2) The Endangered Species Program should modify its mission statement. The mission of the Endangered Species Program was never to ensure that, "... agricultural production is in full compliance with the ESA." Ensuring compliance with the ESA is the job of the Services. The mission of the ESP should be to ensure accurate "on the ground" information regarding pesticide use and environmental exposure from pesticides is available to EPA when it makes its "effects" determinations, and the Services when they make their "jeopardy" determinations.

The reason the Legislature has funded the ESP is to make sure that accurate data is used by federal agencies in their determinations, rather than using wildly inaccurate modeling. The most important component of that data is co-located and accurate monitoring data that can verify that pesticides pose no threat to endangered species because those species are not exposed to those pesticides. Secondly, an important focus of data will be to provide more realistic empirical (actual) usage and location information. This will be invaluable in order to "true up" the inaccurate generic data and computer models used by the federal agencies.

Only when the Program understands that its mission is to support Washington Agriculture by making sure that accurate information is in front of federal agencies when they make those critical decisions will it receive the data and support it needs from Washington's agricultural industry.

The primary goal of this Program should be to have no restrictions placed on pesticide use beyond the existing federal label. The second thing the Program should focus on, in the rare instance that a pesticide actually poses "jeopardy" to endangered species, is to develop mitigation measures that will allow the Services to reverse their "jeopardy" finding with the least amount of impact on Washington Agriculture.

3) The Department of Agriculture should expand the Program's water monitoring efforts to the Skagit River Basin. The information obtained by the Program from its water monitoring efforts in the Yakima Valley will

prove very beneficial to agricultural interests in Yakima County. In addition, that data should be able to be used to "true up" the modeling used by federal agencies in other Eastern Washington watersheds.

Unfortunately, the EPA and the Services will not be able to use that data in watersheds in Western Washington. The Department has submitted a \$275,000 request to the Legislature to expand its water monitoring program to the Skagit Valley. The WSPC supports this appropriation. The Skagit Valley is a very important potato production area in Washington State, and the information obtained by the Program there will help to ensure that no unnecessary restrictions are implemented due to lack of information. Additionally, data obtained in the Skagit Valley will allow the federal agencies to "true up" their modeling when looking at the possible impacts of pesticide usage in other watersheds in Western Washington.

4) Would approval of the State Plan obligate EPA and the Services to use the data that WSDA generates?

What assurance is there that the agencies will use WSDA's data? We expect that the apparently good working relationship between WSDA and EPA and Services will facilitate use of WSDA data by the agencies. However, the agencies have established processes for use of pesticide data (e.g., species and co-located habitat templates). We recommend that a plan (an implementation plan) be developed in conjunction, or as part of this plan, by which the general types and quality of the data to be collected by WSDA can be agreed to in advance between WSDA and the agencies. The State has to be certain that its resources and the stakeholder resources are expended effectively and efficiently.

5) WSDA technical credibility. In conjunction with the above, WSDA should retain and demonstrate sufficient scientific credibility to the agencies in order to facilitate and encourage use of its data and information by agencies.

6) WSDA's overall mission. Although not needed as a stated objective of the Plan, we strongly recommend that WSDA offer to proactively participate in pesticide effects determinations in its overall plan. If all WSDA intends to do is to provide data to agencies when, and if, asked for, WSDA will lose a great opportunity to positively influence the effects determination process. WSDA can review the range of pesticide and habitat data used by EPA for effects determination and proactively seek to provide state-specific data before the effects determinations are conducted.

7) Benefits to Registrants. We strongly urge that the generated data be made easily available to registrants. The registrants can potentially use these data in their re-registration process to refine their risk estimates, or to support or refute previous effects determinations, most of them based on generic overly-conservative modeling efforts.

SPECIFIC TECHNICAL COMMENTS

8) The Washington State Plan's three components (draft page 3) should be modified. WSDA should modify the components of its draft Plan to the following:

- Reducing uncertainty for pesticide *effects determinations* made by EPA and deciding the impact of actual pesticide effects to endangered species on pesticide registrations in collaboration with the EPA.
- Interact with the Services to provide the best available scientific data regarding pesticide use *and exposure* in the development of biological opinions of impact or risk posed to endangered species.
- Work with Washington agricultural stakeholders to develop and ensure that mitigation measures required by EPA are the least disruptive of agricultural practices as possible.

As noted earlier, the Program needs to understand that its mission is to provide *accurate* data that will allow the federal agencies to make determinations that are the least disruptive to Washington Agriculture as possible. The Program's goals should be to show that endangered species are not exposed to pesticides used in accordance

with the federal label. If that is the case, no additional restrictions on those pesticides should be allowed.

Only when the more accurate, real, (as opposed to modeling), data shows that a given pesticide in fact poses "jeopardy" to the species, should the state allow the federal agencies to impose any mitigation measures whatever. Once that standard is reached, the Program needs to understand that its mission at that point is to ensure that the restrictions imposed by the federal agencies are the least restrictive measures that will ensure the use of the products poses no "jeopardy" to listed species.

9) Title Change. The title of the first sub-section under "Background" should be changed to only "Pesticide Use in Washington State". Please delete "Agriculture Production and"

10) The WSPC agrees that unnecessary restrictions driven by inaccurate, theoretical modeling could have a devastating impact on Washington's Integrated Pest Management (IPM) programs. The draft plan notes that, "The removal of any one specific chemical can have a domino effect disrupting the IPM strategy, and must be considered." The WSPC agrees with the Program's assessment that there will be negative impacts that unnecessary restrictions may have on environmental protection. This negative impact must be brought into the determinations made by the federal agencies under the ESA, and the Department's ESP is the only possible vehicle to allow that to occur.

11) Urban pesticide use must not be allowed to negatively impact Washington agriculture's use of crop protection products. The draft plan notes (at the top of page 5) that urban pesticide use, especially in Western Washington, could impact endangered species. One of the goals of the Program should be to ensure that urban pesticide usage does not lead to unnecessary restrictions being placed on the use of those products by Washington agriculture. One of the ways this may be attained is to ensure that water monitoring occurs that would target any possible urban pesticide runoff before that water body reaches agricultural lands.

12) Implementation of the ESA under FIFRA is only warranted if a particular pesticide poses "jeopardy" to endangered species. The draft plan notes that, "EPA proposes to implement its responsibilities under Section 7 (a) (2) of ESA by completing and upgrading County Bulletins, amending pesticide labels to reference County Bulletins, and enhancing monitoring programs." This comment is misleading.

EPA must first show that a product is "likely to adversely affect" an endangered species before it even asks for consultation with the Services. The Services are then required to determine whether or not the product poses "jeopardy" to the species. If the Services find that the product poses "no jeopardy" to the species, neither that agency, EPA, or WSDA should even consider any additional restrictions on the use of that product. County Bulletins should only be considered once a "jeopardy" finding occurs, or if the bulletin is necessary to avoid that finding.

Throughout the Program's draft plan, this decision making framework for the ESA is unfortunately, (and inaccurately), portrayed as moving from a "may affect" determination to pesticide restrictions. The fundamental goal of the Department's Program should be to ensure that the federal agencies adhere to their statutory requirements to implement mitigation measures only after or to avoid a "jeopardy" finding.

13) The WSDA plan must be used to "true up" the wildly inaccurate modeling presently used by EPA and the Services. The draft plan on the bottom of page 7 and the top of page 8 explains how the Department might be able to "true up" the absurd modeling used by the federal agencies to estimate pesticide exposure. This aspect of the program is critically important to Washington Agriculture.

In order to make sure that this aspect of the program is successful, WSDA must make sure that the data being obtained by the Endangered Species Program will be accepted by the federal agencies in their determinations. If this acceptance does not occur, then the value of the WSDA program is marginal.

14) The ESP must emphasize monitoring data as the "best data available" for salmonid pesticide exposure. Throughout the draft plan, (and most specifically on the top of page 9), monitoring data is presented as less important than crop data and uses data. The relative lack of significance placed on monitoring data by the ESP is extremely troubling to Washington agriculture.

Repeated water monitoring programs have shown little or no pesticide presence in Washington water bodies. However, this critical fact is often overlooked, (and repeatedly ignored), by EPA and the Services. If the ESP is to enjoy any support from within Washington's agricultural community, it must be seen as a tireless advocate for accurate data. This has not been the case over the last several years, and must be changed.

The Program must emphasize to the federal agencies the lack of exposure that it is able to prove with the monitoring data it has obtained, or the entire Program is an incredible waste of public money.

15) WSDA must take an active role in the development of County Bulletins when the federal agencies determine that additional pesticide use restrictions are warranted. The ESP is the only "vehicle" available to the federal agencies to develop relevant County Bulletins. The enormity of the geographic distribution and complexity of pesticide usage in the United States insures that EPA and the Services will have to develop "one-size-fits-all", cookie-cutter restrictions on pesticide usage unless they depend upon state Departments of Agriculture to develop County Bulletins.

If County Bulletins are warranted, WSDA must take the lead in developing those bulletins, and must develop them by working directly with Washington's agricultural industry. If the federal agencies working on this issue are to have any credibility whatever, they must delegate the development of County Bulletins to the ESP. The ESP, if it is to have any credibility with the agricultural industry, must then work directly with that industry to develop mitigation measures that are the least disruptive to agricultural production as possible.

16) Page 9, 1st paragraph under "Phase 3 ..." Section. Change the last sentence to read as follows: "WSDA intends to work with stakeholders to propose practical, protective mitigation measures that will both address ESA issues and minimize economic hardship."

17) Water monitoring data must be used to avoid mitigation measures as well as ensuring that mitigation measures are effective. On the final page of the draft Plan, it is noted that water monitoring data can be used to evaluate the effectiveness of any mitigation measures implemented by the Services, EPA, or WSDA. This is, in fact, true. However, the Plan does not seem to give water monitoring data the same weight at the beginning of the risk assessment process.

Repeated water monitoring programs have shown little or no evidence of pesticides in water bodies in Washington State. This is a fact that must be figured into the original risk assessment analysis, rather than simply being something that tests the effectiveness of mitigation measures that very likely were completely unnecessary.

18) More on water monitoring. Based on the above assessment, the second paragraph under "Assurances" section, page 10, should be modified to state the importance and value of the water monitoring data. It is also of concern as a previous comment states as to whether the data and information that WSDA will provide the agencies, specially the water monitoring data will be used by the agencies in a meaningful way. What gives

WSDA the assurance that the agencies will accept the data? Are they obligated through the ESPP provisions and this Plan to accept and use the data?

19) Draft Summary, modify bullet points page 11.

First bullet point should be changed to: *"Reducing uncertainty for pesticide registration decisions by WSDA collaboration with EPA and co-evaluation of factual pesticide exposure information as it may or may not affect endangered species."*

Second bullet point should be changed to: *"WSDA will interact with NOAA Fisheries and US Fish and Wildlife to accurately evaluate the best available data regarding pesticide use in the development of biological opinions and options to best protect ESUs from pesticide hazards when they exist."*

Third bullet point should be changed to: *"Provide a process for Washington stakeholders to have input into the development of mitigation measures required by EPA that will be the least disruptive to Washington agriculture while ensuring protection of endangered species."*

CONCLUSION

The Washington State Department of Agriculture's Endangered Species Program needs to be commended for developing its draft *Endangered Species Protection Plan for Pesticide Use*. If the Program aligns its effort with these technical comments from the Washington State Potato Commission, this Plan could be seen as extremely beneficial to Washington agriculture. However, if the Plan does not reassess its fundamental mission, or give the water monitoring data it gathers its proper weight, the Program may become irrelevant to Washington's farmers and ranchers.

Sincerely,



Pat Boss

Executive Director

Washington State Potato Commission